

1 AN ACT relating to captive insurers.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 Section 1. KRS 304.49-010 is amended to read as follows:

4 As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

5 (1) "Affiliated company" means any company in the same corporate system as a
6 parent, an industrial insured, or a member organization by virtue of common
7 ownership, control, operation, or management.

8 (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or ore
9 business entities that are licensed insurance producers and that only insure risks
10 on policies placed through their owners.

11 (3) "Captive insurer" means any pure captive insurer, consortium captive insurer,
12 sponsored captive insurer, special purpose captive insurer, agency captive
13 insurer, or industrial insured captive insurer formed or issued a certificate of
14 authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of
15 KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive
16 insurer with respect to operations in Kentucky, unless otherwise permitted by the
17 executive director.

18 (4) "Consortium" means any legal association of individuals, corporations, limited
19 liability companies, partnerships, associations, or other entities ~~that has been in~~
20 ~~continuous existence for at least one (1) year~~, the member organizations of which
21 collectively, or which does itself:

22 (a) Own, control, or hold with power to vote all of the outstanding voting
23 securities or member interests of a consortium captive insurer

- 1 incorporated as a stock insurer or limited liability company, respectively;
2 or
3 (b) Have complete voting control over a consortium captive insurer **organized**
4 ~~incorporated~~ as a mutual insurer; or
5 (c) The member organizations of which collectively constitute all of the
6 subscribers of a consortium captive insurer formed as a reciprocal insurer.
7 (5) "Consortium captive insurer" means any company that insures risks of the
8 member organizations of the consortium and ~~their affiliated companies~~ **that also**
9 **may insure the risks of affiliated companies of the member organizations and**
10 **the risks associated with the consortium itself.**
11 (6) "Excess workers' compensation insurance" means, in the case of an employer that
12 has insured or self-insured its workers' compensation risks in accordance with
13 applicable state or federal law, insurance in excess of a specified per incident or
14 aggregate limit established by the executive director.
15 (7) "Industrial insured" means an insured as defined in KRS 304.11-020(1).
16 (8) "Industrial insured captive insurer" means any company that insures risks of the
17 industrial insureds that comprise the industrial insured group, and their affiliated
18 companies.
19 (9) "Industrial insured group" means any group that meets either of the following
20 criteria:
21 (a) Any group of industrial insureds that collectively:

- 1 1. Own, control, or hold with power to vote all of the outstanding
2 voting securities of an industrial insured captive insurer
3 incorporated as a stock insurer;
- 4 2. Have complete voting control over an industrial insured captive
5 insurer incorporated as a mutual insurer; or
- 6 3. Constitute all of the subscribers of an industrial insured captive
7 insurer formed as a reciprocal insurer; or
- 8 (b) Any group which is created under the Product Liability Risk Retention
9 Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or
10 other limited liability association.
- 11 (10) "Member organization" means any individual, corporation, partnership, or
12 association or other entity that belongs to a consortium.
- 13 (11) "Parent" means a corporation, partnership, or individual that directly or indirectly
14 owns, controls, or holds with power to vote more than fifty percent (50%) of the
15 outstanding voting securities of a pure captive insurer.
- 16 (12) "Pure captive insurer" means any company that insures risks of its parent and
17 affiliated companies or controlled unaffiliated business.
- 18 (13) "Controlled unaffiliated business" means any person ~~company~~:
19 (a) That is not in the corporate system of a parent and its affiliated companies
20 in the case of a pure captive, or that is not in the corporate system of an
21 industrial insured and its affiliated companies in the case of an
22 industrial insured captive insurance company;

- 1 (b) That has an existing contractual relationship with a parent or one of its
2 affiliated companies ~~company~~ in the case of a pure captive, or with an
3 industrial insured or one of its affiliated companies in the case of an
4 industrial insured captive insurance company; and
- 5 (c) Whose risk management function related to the covered risk of loss is
6 controlled by an affiliate of ~~risks are managed by~~ a pure captive insurer or
7 an industrial insured captive insurance company, as applicable,
8 providing coverage or reinsurance ~~in accordance with KRS 304.49-170.~~
- 9 (14) "Foreign captive insurer" means any insurer formed to write insurance business
10 for its parents and affiliates and licensed pursuant to the laws of any state other
11 than Kentucky which imposes statutory or regulatory standards in a form
12 acceptable to the executive director on companies transacting the business of
13 insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive
14 insurers formed under the laws of any jurisdiction other than a state of the United
15 States shall be treated as a foreign captive insurer unless the context requires
16 otherwise.
- 17 (15) "Branch business" means any insurance business transacted by a branch captive
18 insurer in Kentucky.
- 19 (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of
20 authority by the executive director to transact the business of insurance in
21 Kentucky through a business unit with a principal place of business in Kentucky.
- 22 (17) "Branch operations" means any business operations of a branch captive insurer in
23 Kentucky.

- 1 (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates
2 thereof, that are insured by a sponsored captive insurer, where the losses of the
3 participant are limited through a participant contract to the assets of a protected
4 cell.
- 5 (19) "Participant contract" means a contract by which a sponsored captive insurer
6 insures the risks of a participant and limits the losses of the participant to the
7 assets of a protected cell.
- 8 (20) "Protected cell" means a separate account established and maintained by a
9 sponsored captive insurer for one (1) participant.
- 10 (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined
11 by KRS 304.27-010.
- 12 (22) "Special purpose captive insurer" means any person that is licensed under this
13 chapter and designated as a special purpose captive insurer by the executive
14 director. A person may be designated as a special purpose captive insurer if it is
15 established for one (1) specific purpose or transaction, and where it is desirable to
16 isolate the purpose or transaction from the other activities of a party or parties
17 involved in the transaction, or where the transaction dictates that the vehicle
18 should not be treated as controlled or owned by any other party to that transaction.
- 19 (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and
20 is approved by the executive director to provide all or part of the capital and
21 surplus required by applicable law and to organize and operate a sponsored
22 captive insurer.
- 23 (24) "Sponsored captive insurer" means any captive insurer:

- 1 (a) In which the minimum capital and surplus required by applicable law is
2 provided by one (1) or more sponsors;
3 (b) That is formed or issued a certificate of authority under the provisions of
4 this subtitle;
5 (c) That insures the risks of separate participants through contract; and
6 (d) That segregates each participant's liability through one (1) or more
7 protected cells.

8 Section 2. KRS 304.49-040 is amended to read as follows:

- 9 (1) No captive insurer shall be issued a certificate of authority unless it shall possess
10 and thereafter maintain unimpaired paid-in capital and surplus of:
11 (a) In the case of a pure captive insurer, not less than two hundred fifty
12 thousand dollars (\$250,000);
13 (b) ~~In the case of an consortium captive insurer, not less than seven hundred~~
14 ~~fifty thousand dollars (\$750,000);~~
15 ~~(e)]~~ In the case of a consortium, sponsored, agency, or industrial insured
16 captive insurer, not less than five hundred thousand dollars (\$500,000);
17 (c) ~~[(d) In the case of a sponsored captive insurer, not less than one million dollars~~
18 ~~(\$1,000,000);~~
19 ~~(e) — In the case of an agency captive insurer, not less than five hundred~~
20 ~~thousand dollars (\$500,000); and~~
21 ~~(f)~~ (e) In the case of a special purpose captive insurer, not less than two hundred
22 fifty thousand dollars (\$250,000), or another amount determined by the
23 executive director.

- 1 (2) Notwithstanding the requirements of subsection (1) of this section, no captive
2 insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230
3 shall be issued a certificate of authority unless it shall possess and thereafter
4 maintain free surplus of **not less than five hundred thousand dollars (\$500,000)**
5 ~~[one million dollars (\$1,000,000)]~~.
- 6 (3) The executive director may prescribe additional capital and surplus based upon
7 the type, volume, and nature of insurance business transacted.
- 8 (4) Capital and surplus may be in the form of cash or an irrevocable letter of credit
9 issued by a bank approved by the executive director and chartered by the
10 Commonwealth of Kentucky or a member bank of the Federal Reserve System, or
11 other assets as may be approved by the executive director.
- 12 (5) In the case of a branch captive insurer, as security for the payment of liabilities
13 attributable to the branch operations, the executive director shall require that a
14 separate trust fund, funded by an irrevocable letter of credit or other acceptable
15 asset, be established and maintained in the United States for the benefit of United
16 States policyholders and United States ceding insurers under insurance policies
17 issued or reinsurance contracts issued or assumed, by the branch captive insurer
18 through its branch operations. The amount of this security may be no less than the
19 capital and surplus required in this section and the reserves on the insurance
20 policies or the reinsurance contracts, including reserves for losses, allocated loss
21 adjustment expenses, incurred but not reported losses, and unearned premiums
22 with regard to business written through the branch operations; provided, however,
23 the executive director may permit a branch captive insurer that is required to post

1 security for loss reserves on branch business by its reinsurer to reduce the funds in
2 the trust account required by this section by the same amount so long as the
3 security remains posted with the reinsurer. If the form of security selected is a
4 letter of credit, the letter of credit must be established by, or issued or confirmed
5 by, a bank chartered in Kentucky or a member bank of the Federal Reserve
6 System.

7 Section 3. KRS 304.49-060 is amended to read as follows:

8 (1) A ~~pure captive insurer or a sponsored captive insurer~~ shall be formed incorporated
9 as a:

10 (a) stock insurer with its capital divided into shares and held by the stockholders;

11 ~~(2) A consortium captive insurer or an industrial insured captive insurer may be:~~

12 ~~(a) Incorporated as a stock insurer with its capital divided into shares and held by~~
13 ~~the stockholders; or~~

14 ~~(b) [Incorporated as a] mutual insurer without capital stock, the governing~~
15 ~~body of which is elected by the member organizations of its consortium;~~
16 ~~or~~

17 ~~(c) [Organized as a] reciprocal insurer in accordance with Subtitle 27 of this~~
18 ~~chapter;~~

19 ~~(3) — A special purpose captive insurer may be:~~

20 ~~(a) — Incorporated as a stock corporation;~~

21 ~~(b) — Incorporated as a nonstock corporation;~~

22 (d) ~~(e) Formed as a~~ limited liability company;

23 (e) ~~(d) Formed as a~~ partnership;

- 1 (f) ~~[(e) Formed as a]~~ limited partnership;
- 2 (g) ~~[(f) Formed as a]~~ statutory **legal, or business** trust; or
- 3 (h) ~~[(g)]~~ Such other person approved by the executive director, other than a
- 4 natural person in his or her individual capacity.

5 ~~[(4) A sponsored captive insurer may be:~~

6 ~~(a) Incorporated as a stock corporation;~~

7 ~~(b) Incorporated as a nonstock corporation;~~

8 ~~(c) Formed as a limited liability company;~~

9 ~~(d) Formed as a partnership;~~

10 ~~(e) Formed as a limited partnership; or~~

11 ~~(f) Formed as a statutory trust.]~~

12 (2) ~~[(5)]~~ A risk retention group may take any form permitted under the Liability Risk

13 Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.

14 (3) ~~[(6)]~~ A captive insurer incorporated or organized in Kentucky shall have **at least one**

15 (1) ~~not less than three (3)~~ incorporators or ~~two (2)~~ organizers.

16 (4) ~~[(7)]~~ In the case of a captive insurer, the executive director shall find, in order to issue

17 a certificate of authority, that the establishment and maintenance of the proposed

18 captive insurer will promote the general good of the state. In arriving at such a

19 finding, the executive director shall consider:

20 (a) The character, reputation, financial standing, and purposes of the

21 incorporators or organizers;

1 (b) The character, reputation, financial responsibility, insurance experience,
2 and business qualifications of the persons responsible for the conduct of
3 the captive insurer's affairs; and

4 (c) Any other aspects the executive director deems advisable.

5 (5) [~~(8)~~] The capital stock of a captive insurer incorporated as a stock insurer may be
6 authorized with no par value.

7 (6) [~~(9)~~] Captive insurance companies formed as corporations entity under the provisions
8 of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the
9 provisions of KRS Chapter 271B as well as the applicable provisions contained in
10 KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of
11 KRS Chapter 271B and the provisions of this chapter, the latter shall control. The
12 provisions of this chapter, pertaining to mergers, consolidations, conversions,
13 mutualizations, and redomestications, shall apply in determining the procedures to
14 be followed by captive insurance companies in carrying out any of the
15 transactions described therein, except that:

16 (a) The executive director may, upon request of an insurer party to a merger
17 authorized under this subsection, waive the requirement of KRS 304.24-
18 390(4); and

19 (b) The executive director may waive or modify the requirements for public
20 notice and hearing in accordance with rules which the executive director
21 may adopt addressing categories of transactions. If a notice of public
22 hearing is required, but no one requests a hearing, then the executive
23 director may cancel the hearing.

(7) ~~[(40)]~~ Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.

(8) ~~[(41)]~~ In addition to the provisions of subsection (10) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.

(9) ~~[(42)]~~ The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.

(10) ~~[(43)]~~ The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

(II) [(14)] Each owner of an agency captive insurer shall be licensed as an insurance producer.

(12) Captive insurance companies formed as a Limited Liability Company under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 273 as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 273 and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein.

Section 4. KRS 304.49-070 is amended to read as follows:

(1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.

(2) On or before March 1 of each year, each captive insurer shall submit to the executive director a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the executive director approves the use of statutory accounting principles or international accounting standards, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the executive director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the executive director. Any captive insurer whose use of statutory accounting principles is approved by the executive director

1 may make modifications and adaptations as are necessary to record as admitted the full
2 value of all investments by the captive insurer permitted under this subtitle and, subject to
3 the executive director's approval, to make its reports under this section consistent with
4 the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the
5 exception of those formed as a risk retention group, shall file reports on a form prescribed
6 by the executive director through administrative regulation. A captive insurer formed as a
7 risk retention group shall file reports pursuant to KRS 304.2-205, with additional
8 information or modification as the executive director may prescribe. The executive
9 director shall by administrative regulation propose the forms in which captive insurers
10 shall report.

11 (3) ~~Any pure captive insurer or an industrial insured captive insurer insuring the risks~~
12 ~~of industrial insured groups as defined in KRS 304.49-010(9)(a) may make written~~
13 application for filing the required report on a fiscal year end. If an alternative reporting
14 date is granted, the annual report is due sixty (60) days after the fiscal year end.

15 (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with
16 the executive director a copy of all reports and statements required to be filed under the
17 laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of
18 two (2) of its executive officers. If the executive director is satisfied that the annual report
19 filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate
20 information concerning the financial condition of the foreign captive insurer, the
21 executive director may waive the requirement for completion of the captive annual
22 statement for business written in the foreign jurisdiction.

(5) At his or her sole discretion, the executive director may approve an extension to the March 1 filing due date for up to six (6) months upon a showing of good cause.

Section 5. KRS 304.49-100 is amended to read as follows:

(1) A captive insurer shall establish, monitor and control its investment strategy prudently, setting clear guidelines with regard to the exposure to different investment types, levels of investment grade and exposure to individual investments.

(2) A captive insurer shall not be subject to any restrictions on allowable investments in this chapter, including those limitations contained in Subtitle 7 of this chapter; provided however, that the executive director may prohibit or limit any investment that threatens the solvency or liquidity of any company at his or her sole discretion.

(3) A consortium captive insurer, sponsored captive insurer, and an An industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(9)(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the executive director may approve the use of alternative reliable methods of valuation and rating.

~~[(2)—No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the executive director may prohibit or limit any investment that threatens the solvency or liquidity of any such company.]~~

(4) ~~[(3) Only a pure]~~ A captive insurer may make loans to its parent company or affiliates; however, no loans to a parent company or any affiliate shall be permitted

without prior written approval of the executive director and shall be evidenced by a note in a form approved by the executive director.

~~[(4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.]~~

Section 6. KRS 304.49-110 is amended to read as follows:

(1) Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, 304.5-140, and 304.5-150, on risks ceded by any other insurer.

(2) Any captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the following provisions:

(a) Credit for reinsurance shall be permitted if the reinsurer is in compliance with ~~[of] KRS 304.5-140. [A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with KRS 304.5-140.]~~

(b) Credit for reinsurance may be permitted if the reinsurer:

1. Maintains an A- or higher A.M. Best rating or other similar rating from a rating agency acceptable to the executive director;
2. Is licensed and domiciled in a jurisdiction acceptable to the executive director; and
3. Maintains a minimum policy holder surplus in an amount acceptable to the executive director based upon a review of the most recent audited financial statements; or

(c) Credit for reinsurance may be permitted if the reinsurer satisfies all of the following requirements:

- 1 1. The captive insurer or captive manager files annually, or before
2 June 30, or at the request of the executive director, the reinsurer's
3 audited financial statements, which shall be analyzed by the executive
4 director to assess the appropriateness of the reserve credit or the initial
5 and continued financial condition and net worth of the reinsurer;
- 6 2. The reinsurer demonstrates to the satisfaction of the executive
7 director that it maintains a ratio of net written premium, wherever
8 written, to surplus and capital of not more than three (3) to one (1);
- 9 3. The affiliated reinsurer obtains written approval from the
10 executive director prior to writing third-party business;
- 11 4. The reinsurer obtains written approval from the executive
12 director prior to using cell arrangements;
- 13 5. The reinsurer is licensed and domiciled in a jurisdiction
14 acceptable to the executive director; and
- 15 6. The reinsurer submits to the examination authority of the
16 executive director.
- 17 (3 The executive director may impose any other requirements he or she deems
18 necessary before permitting credit for reinsurance under subsection (2) of this statute,
19 including but not limited to requiring an approved funds-held agreement, letter of
20 credit, trust or other acceptable collateral based on unearned premium, loss and loss
21 adjustment expense reserves, and incurred but not reported reserves.
- 22 (4 An industrial insured captive insurer insuring the risks of an industrial insured
23 group defined in KRS 304.49-010(9)(b) may only provide reinsurance or take credit for

1 reinsurance ceded if it meets the standards prescribed by the National Association of
2 Insurance Commissioners or the requirements of this statute.

3 (5) [(3)] For all purposes of KRS 304.49-010 to 304.49-230, insurance by a captive
4 insurer of any workers' compensation qualified self-insured plan of its parent and
5 affiliates shall be deemed to be reinsurance.

6 Section 7. KRS 304.49-130 is amended to read as follows:

7 No captive insurer, including a captive insurer organized as a reciprocal insurer under
8 KRS 304.49-010 to 304.49-230, shall be permitted to join or contribute financially to any
9 plan, pool, association, or guaranty or insolvency fund in Kentucky, nor shall any such
10 captive insurer, or its insured, or its parent or any affiliated company, or any member
11 organization of its consortium, or in the case of a captive insurer organized as a reciprocal
12 insurer, any subscriber thereof, receive any benefit from any such plan, pool, association,
13 or guaranty or insolvency fund for claims arising out of the operations of such captive
14 insurer; however, subject to the approval and regulation of the executive director, this
15 provision shall not prohibit captive insurers from entering into reinsurance or pooling
16 transactions in the normal course of business.

17 Section 8. KRS 304.49-180 is amended to read as follows:

18 (1) A consortium captive insurer or industrial insured group formed as a stock or
19 mutual corporation, or other legal or statutory entity, may be converted to or
20 merged with and into a reciprocal insurer in accordance with a plan therefor and
21 the provisions of this section.

- 1 (2) Any plan for such conversion or merger shall be fair and equitable to the
2 shareholders, in the case of a stock insurer, or the policyholders, in the case of a
3 mutual insurer.
- 4 (3) In the case of a conversion authorized under subsection (1) of this section:
- 5 (a) The conversion shall be accomplished under any reasonable plan and
6 procedure approved by the executive director, but the executive director
7 shall not approve any plan of conversion unless the plan:
- 8 1. Satisfies the provisions of subsection (2) of this section;
- 9 2. Provides for a hearing, of which notice has been given to the
10 insurer, its directors, officers, and stockholders, in the case of a
11 stock insurer, or policyholders, in the case of a mutual insurer, all
12 of whom shall have the right to appear at the hearing, except that
13 the executive director may waive or modify the requirements for
14 the hearing, provided that if a notice of hearing is required, but no
15 hearing is requested, the executive director may cancel the hearing;
- 16 3. Provides for the conversion of existing stockholder or policyholder
17 interests into subscriber interests in the resulting reciprocal insurer,
18 proportionate to stockholder or policyholder interests in the stock
19 or mutual insurer; and
- 20 4. Is approved:
- 21 a. In the case of a stock insurer, by a majority of the shares
22 entitled to vote represented in person or by proxy at a duly

1 called regular or special meeting at which a quorum is
2 present;

3 b. In the case of a mutual insurer, by a majority of the voting
4 interests of policyholders represented in person or by proxy
5 at a duly called regular or special meeting at which a
6 quorum is present;

7 (b) The executive director shall approve the plan of conversion if the
8 executive director finds that the conversion will promote the general good
9 of the state in conformity with those standards set forth in KRS 304.49-
10 060(7);

11 (c) If the executive director approves the plan, the executive director shall
12 amend the converting insurer's certificate of authority to reflect conversion
13 to a reciprocal insurer and issue an amended certificate of authority to the
14 company's attorney-in-fact;

15 (d) Upon the issuance of an amended certificate of authority of a reciprocal
16 insurer by the executive director, the conversion shall be effective; and

17 (e) Upon the effectiveness of the conversion, the corporate existence of the
18 converting insurer shall cease and the resulting reciprocal insurer shall
19 notify the Secretary of State of the conversion.

20 (4) A merger authorized under subsection (1) of this section shall be accomplished
21 substantially in accordance with the procedures set forth in KRS 304.24-390,
22 except that, solely for purposes of the merger:

- 1 (a) The plan of merger shall satisfy the provisions of subsection (2) of this
2 section;
- 3 (b) The subscribers' advisory committee of a reciprocal insurer shall be
4 equivalent to the board of directors of a stock or mutual insurer;
- 5 (c) The subscribers of a reciprocal insurer shall be the equivalent of the
6 policyholders of a mutual insurer;
- 7 (d) If a subscribers' advisory committee does not have a president or
8 secretary, the officers of the committee having substantially equivalent
9 duties shall be deemed the president or secretary of the committee;
- 10 (e) The executive director may, upon request of an insurer party to a merger
11 authorized under subsection (1) of this section, waive the requirement of
12 KRS 304.24-390(4);
- 13 (f) The executive director shall approve the articles of merger if the executive
14 director finds that the merger will promote the general good of the state in
15 conformity with those standards set forth in KRS 304.49-060(7). If the
16 executive director approves the articles of merger, the executive director
17 shall indorse his or her approval thereon and the surviving insurer shall
18 present and file them with the Secretary of State;
- 19 (g) Notwithstanding KRS 304.49-040, the executive director may permit the
20 formation, without surplus, of a captive insurer organized as a reciprocal
21 insurer, into which an existing captive insurer may be merged for the
22 purpose of facilitating a transaction under this section; however, there
23 shall be no more than one (1) authorized insurer surviving the merger; and

1 (h) An alien insurer may be a party to a merger authorized under subsection
2 (1) of this section, provided that the requirements for a merger between a
3 domestic and a foreign insurer under KRS 304.24-390 shall apply to a
4 merger between a domestic and an alien insurer under this subsection. The
5 alien insurer shall be treated as a foreign insurer under KRS 304.24-390
6 and the other jurisdictions shall be the equivalent of a state for purposes of
7 KRS 304.24-390.

8 Section 9. KRS 304.49-220 is amended to read as follows:

9 (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
10 304.49-230 shall return to the Department of Insurance [Revenue] a statement under
11 oath of all premium receipts on business written by the captive insurer during the
12 preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-
13 tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-
14 tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and two-
15 tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000), and
16 seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct
17 premiums collected or contracted for on policies or contracts of insurance written by the
18 captive insurer during the year ending December 31 next preceding, after deducting from
19 the direct premiums subject to the tax the amounts paid to policyholders as return
20 premiums, which shall include dividends on unabsorbed premiums or premium deposits
21 returned or credited to policyholders.

22 (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to
23 304.49-230 shall return to the Department of Revenue a statement under oath of all

1 assumed reinsurance premium receipts during the preceding year and shall pay, on or
2 before March 1 in each year, a tax at the rate of two hundred twenty-five thousandths of
3 one percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed
4 reinsurance premiums, and one hundred fifty thousandths of one percent (0.150%) on the
5 next twenty million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%)
6 on the next twenty million dollars (\$20,000,000), and twenty-five thousandths of one
7 percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to
8 premiums for risks or portions of risks which are subject to taxation on a direct basis
9 pursuant to subsection (1) of this section. No reinsurance premium tax shall be payable in
10 connection with the receipt of assets in exchange for the assumption of loss reserves and
11 other liabilities of another insurer, self-insurer, or other funding mechanism under
12 common ownership and control if the transaction is part of a plan to discontinue the
13 operations of the other insurer, self-insurer, or other funding mechanism, and if the
14 intent of the parties to the transaction is to renew or maintain the business with the
15 captive insurer.

16 (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections
17 (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year,
18 the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.

19 (4) Two (2) or more captive insurance companies under common ownership and
20 control shall be taxed as though they were a single captive insurer.

21 (5) For the purposes of this section, common ownership and control shall mean:

1 (a) In the case of stock corporations, the direct or indirect ownership of eighty
2 percent (80%) or more of the outstanding voting stock of two (2) or more
3 corporations by the same shareholder or shareholders; and

4 (b) In the case of mutual corporations, the direct or indirect ownership of
5 eighty percent (80%) or more of the surplus and the voting power of two (2) or
6 more corporations by the same member or members.

7 (6) In the case of a branch captive insurer, the tax provided for in this section shall
8 apply only to the branch business of the company.

9 (7) The tax provided for in this section shall constitute all taxes collectible under the
10 laws of Kentucky from any captive insurer, and the taxes imposed under this section shall
11 be in lieu of all excise, license, occupational, or other taxes imposed by the state, county,
12 city, or other taxing district ~~except as provided in KRS 136.320(6) and (7).~~

13 (8) The Kentucky Department of Revenue shall annually distribute ten percent (10%)
14 of the premium tax revenues collected pursuant to this section to the Office of Insurance
15 for the regulation of captive insurance companies under KRS 304.49-010 to 304.49-230.

16 Section 10. The following statute is repealed:

17 KRS 304.49-170 - Administrative regulations regarding risk management function